

Whose womanhood? Feminist postcolonial approaches to law

Katharina Wommelsdorff

2020-01-13T08:00:35

In July 2019, shortly before her election as the first ever female president of the European Commission, German centre-right minister of defence Ursula von der Leyen introduced the Hashtag #EuropelsAWoman. Who did she mean by this invocation of womanhood? After all, during her preceding posts as family and as employment minister, her policies of gender equality – for example, women quotas in advisory boards of stock-listed corporations and amendments regarding parental benefits – were first and foremost addressed at one particular group of women: an already well-off middle class. When von der Leyen [tweeted](#) in the same breath, “[f]or centuries Europeans have fought so hard for their liberty and independence. The #RuleOfLaw is our best tool to defend these freedoms and to protect the most vulnerable in our Union” – which Europe was that? A Europe that for centuries fought for its liberty and independence while destroying the liberty, independence and lives of millions of people in its colonial appropriations? It is a Europe, after all, that has now chosen to entitle its portfolio on migration and external border control “[Protecting our European Way of Life](#)” (see also [here](#)). This chimes uncomfortably with current protectionist right-wing narratives which – while not new or surprising – seem to have become more broadly socially accepted again.

How do these glimpses into current European politics relate to feminist postcolonial approaches to law?

Postcolonial feminisms critically engage with the consequences of colonialism up to the present day and make visible the deeply embedded patriarchal, racialized exclusionary structures of [living together](#) in a globalized capitalist world and its societies. As its editors Susan Harris Rimmer and Kate Ogg highlight in the [interview](#) this blog symposium is based on, the Research Handbook on Feminist Engagement with International Law examines how international law can be used against, but also has been utilized in the creation and perpetuation of – often intersecting (see [here](#) and [here](#)) – marginalizations on the basis of sex, sexual identity and gender, nationality, class, caste, religion and race (e tc., see [here](#)).

Feminist postcolonial legal critique ...

Postcolonial theory’s heterogeneous approaches deal with colonization as a system of power and subordination, with its implications as an epistemological and representational system, as well as with movements of anticolonial resistance. Furthermore, they engage with the continuing impact of colonialism and therefore reject a narrative according to which it ended with the formal independence of colonized states. The deconstruction of legal concepts and doctrines reveals how international law can continue to uphold hierarchical structures despite formal decolonization. This can be seen quite vividly, for instance, with respect to the

principle of [intertemporality](#), that limits, if not excludes, claims for [reparation](#) for colonial atrocities.

Feminist postcolonial approaches have highlighted the shortcomings of postcolonial studies vis-à-vis gender theories – and vice versa. The intertwinements of racialized, class and gender discrimination thus constitute a central element of the critique. In sharp dissociation from the homogenizing tendencies of Western/*white* feminism(s), postcolonial scholars such as Chandra Talpade Mohanty have [argued](#) that to be positioned, in place (thus being put in place), is part of the problematic language which assumes an always pre-constituted universalized subject situated in a pre-constituted societal context – which in turn ultimately serves the construction of “third world difference”, and the “Third World Woman”. The “[universalizing gestures](#)” of common interests and basic needs inherent in such figures disregard, according to Nikita Dhawan, the “disparate historical configurations of family, community, society, and state that differently frame practices, vulnerability, as well as agency, in the postcolonial world”.

Postcolonial feminist approaches thus offer instruments to question the basic foundations and structural ordering that an allegedly ‘objective’ international law creates in its aspirations to gender justice, thereby exposing the privileging of the Western (male) gaze in legal practice and institutional settings. These perspectives engage, furthermore, with the epistemological significance of the production of knowledge on the Global South – a practice often inherent in the field of [comparative law](#). As an emancipatory project, post-colonial studies have therefore demanded not only a change of perspective from center to periphery but have also challenged the essentializing effect that this very dichotomy creates.

... in current developments

International legal scholars have applied feminist postcolonial critique to a wide variety of fields within international law. They have criticized human rights law, for example, for its tendency to re-create colonial ideas of progress, of a civilizing mission, and of modernity. [We cannot not want human rights](#), as Ratna Kapur puts it. However, postcolonial critiques such as the Third World Approaches to International Law (TWAAIL) continue to reveal [savages-victims-saviors](#) genealogies. Postcolonial scholarship thus analyses the discursive hegemonic effects of international human rights law and its Western normative bias so as to challenge its Eurocentrism and its claim to universality.

Postcolonial feminists have shown how representational and attributive practices [victimize women](#) and homogenize women’s societal positions. Such narratives of the ‘oppressed native woman’ not only served to [justify the colonial encounter](#). Rather, as [lines of continuity](#), they still [legitimize](#) state practice in the broader field of national and international security law regimes and humanitarian intervention. In this context, postcolonial feminists have made visible the current gendered postcolonial implications of a global ‘[war on terrorism](#)’ (which generally does not include strategies against Christian/*white* nationalist fundamentalisms) with its concomitant gender justice policies of [un-veiling](#) Muslim women. The claim to be ‘[saving](#) Muslim women from Muslim men’, to analogize Gayatri Chakravorty Spivak’s

famous phrasing, not only creates a homogenized image of Islam and an allegedly subordinated Muslim woman according to which '[saving](#)' can be utilized as a basis of intervention; it also strongly relates to an overall context of widespread anti-Muslim racisms, which can be explained in terms of a postcolonial [\(neo-\)Orientalism](#).

In response to [critique](#) of the focus of postcolonial studies on discursive and representational practices, postcolonial feminists' work has shifted more strongly to a material(ist) critique. This involves facing the challenges of a globalized economic system with its (deregulated) financial capital market and of the legal instruments that constitute this system, such as EU free trade and international investment (protection) agreements. Recent topics pertain to the interrelated questions of colonialism, gender, and racialized discrimination perpetuated within the [international division of labor](#), which enables an on-going exploitation of the Global South. Institutional settings such as the International Monetary Fund or the World Trade Organization have been argued to negatively affect women in particular (see [here](#)). These perspectives question the gender justice proclamations that equate participation in the market with progress towards well-being and with a decline of destitution. It is postcolonial feminists who alert us to the fact that in these contexts, it is not the [category 'woman'](#) that should be the point of departure, but rather a case-sensitive analysis of the very particular, diverse conditions of people, intertwined in a multitude of internal and external factors such as locality, class and state infrastructure in relation to the postcolonial continuities of globalized economies.

The aim that feminist and postcolonial scholars share not only relates to the deconstruction, [decolonization](#) and [politicization](#) of law; rather, they also aim to extract what can be useful for counter-hegemonic work and to reconstruct law towards societal transformation. Women's rights (legal) activists and scholars therefore aim to counter patriarchal structures within communities, families or states' institutions, while simultaneously circumventing the hegemonic appropriation of gender equality claims and resulting multiplications of exclusion and oppression. Navigating between state-directed as well as localized action in this way shows how the interplay of legal and other activist means can be used in an agency-sensitive manner in quests for gender justice to create accountability for the [colonial past](#) (see also [here](#) and [here](#)) as well as [accountability](#) of Western multinational corporations or (state) institutions in the neo-colonial present.

Towards solidarity?

Against this backdrop, claims of 'sisterhood' in international feminist engagements have long been [criticized](#) for their homogenizing effects – not unlike the womanhood invoked by von der Leyen. Feminist postcolonial approaches in law evoke the necessity of critically reflecting on one's own legal socialization and positionality of speaking. By prompting Western feminist legal scholarship to [gaze back on itself](#), they remind us of our responsibility and potential complicity in the creation and perpetuation of power structures in international law. This alertness to its [colonial repercussions](#) should be a fundamental concern of pluralistically oriented international legal scholarship and of a Western society that is aware of its locality in a world of [different](#) others – who are not 'Othered'.

Not only should feminist engagements with (international) law be part of the regular academic curriculum, of legislative debate and of (self-)reflective adjudication. The aim needs to go further. It needs to consist in moving towards decolonizing (international) legal scholarship and practice, so as to account for the specific multi-relational hierarchies that have an impact on women and on other marginalized people(s) with concerns as diverse as the societal structures they move in – and so as to thus reach beyond the mere category of womanhood. In working towards a serious claim for societal transformation and transnational feminist solidarity, what is needed are legal approaches in the West and in Europe that consistently address the intersectional racist, postcolonial, classist, and patriarchal structures within which today's globalized capitalisms operate.

The internal and external policies of Europe – to come back to this common display of ancient Greek mythological continuity – will be measured against its actions in this regard. Whether Europe is a woman or not.

The author would like to thank Jens T. Theilen for valuable feedback.

Katharina Wommelsdorff is pursuing a PhD project in comparative constitutional law with a focus on gender equality, intersectionality and postcolonial critique.

Cite as: Katharina Wommelsdorff, "Whose womanhood? Feminist postcolonial approaches to law", *Völkerrechtsblog*, 13 January 2020.

